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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/940,117	08/28/2001	Vincent P. Robibero	1-15662	3920

43935 7590 07/01/2010
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EXAMINER

VAN BRAMER, JOHN W

ART UNIT	PAPER NUMBER
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3622

NOTIFICATION DATE	DELIVERY MODE
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07/01/2010

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/940,117
Filing Date: August 28, 2001
Appellant(s): ROBIBERO, VINCENT P.

William J. Clemens
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed February 23, 2009 appealing from the Office action mailed July 8, 2008. Additionally, this is in response to the Director ordered remand under 37 CFR 41.35(c) from the Board of Patent Appeals and Interferences mailed 6/9/10.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct with the addition of the New Ground of Rejection discussed below:

NEW GROUND(S) OF REJECTION

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Claim(s) 18 and 35 are rejected under 35 USC § 112, ¶ 2, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

- 6,363,359 Gronemeyer et. al. 3-2002
- Ives et. al., "After the Sale: Leveraging Maintenance with Information Technology", MIS Quarterly, Vol. 12, No 1, March 1988, pp. 7-21
- Palme et. al. "RFC 2557: MIME Encapsulation of Aggregate Documents, such as HTML", Network Working Group, March 1999, pp. 1-27

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 112

1. The amendment filed on March 13, 2008 has failed to overcome the 35 U.S.C. 112, second paragraph, rejection of claims 36 and 37, detailed in the Office Action dated December 17, 2007. Therefore, the rejection is maintained. The amendments to claims 36 and 37, still indicate that the operating parameter of claims 35 and 18 include a usage parameter. However, claims 35 and 18 do not require that the operating parameter includes a usage parameter. Instead Claims

35 and 18 indicate that the operating parameter includes “at least one of a usage parameter, an environmental parameter, and mechanical deterioration”. Once again, in order to overcome the rejection, the examiner recommends that the applicant amend claims 35 and 18 to clearly state that the operating parameter must include a usage parameter.

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 18-27, 37 and 39 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Amended independent Claim 18 recites an input means located at and connected to an installation. However, the examiner can not locate, in the applicants specification, an input means that is required to be located at an installation. Instead, the examiner finds that Page 7, lines 8-30 of the applicant's specification specifically discloses an input means which is remotely located.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 38 and 39 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 38 and 39 depend from independent claims 35 and 18, respectively. Independent claims 18 and 35 do not require that an environmental parameter be present. The claims recite "at least one of a usage parameter, an environmental parameter, and mechanical deterioration". Therefore, the limitations that set forth the metes and bounds of the claims merely require that one of the three operating parameters be present. Without a requirement that the environmental parameter be present the dependent claims fail to further limit the parent claim. The examiner recommends, provided there is support in the specification, amending independent claims 18 and 35 to clearly state that the operating parameter must include an environmental parameter.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 18 – 20, and 22 – 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gronemeyer et al. (U.S. Patent Number: 6,363,359) in view of Ives et al. ("After the Sale: Leveraging Maintenance with Information Technology", MIS Quarterly, Vol. 12, No 1, March 1988, pp 7-21).

Claim 18. Gronemeyer discloses an apparatus for using data obtained from remote monitoring of customer equipment for service purposes to generate product sales offers to customers comprising:

- a. An input means, located at and connected to an installation, for receiving dynamic parametric data information related to electrical and mechanical operating parameters of customer equipment in the installation being remotely monitored, said dynamic parametric data information being suitable for service purposes.

(Col 2, lines 41 – 57; and Col 3, line 11 through Col 4, line 24)

- b. An equipment database storage device remote from the installation and connected to said input means for receiving and storing said parametric data information in a form suitable for determining when to take corrective service action at the installation, based upon said dynamic parametric data information.
(Col 5, lines 47-67) (Gronemeyer references a log file in this section that is transmitted to the server. The examiner has interpreted this, as presented in context, as a file of records relating to software and hardware on the consumers computer. A database is simply a large collection of organized data. As such, the log file as described is considered a database. In order for the server to perform operations on this database to determine the related products needed by the customer, it must inherently be stored in memory on the server. At a very minimum it would need to be stored in a temporary memory. Additionally, the examiner interprets parametric data to be data relating to parameters, measurements and values upon which the operation of a device relies.

- Therefore, information regarding the hardware and software on a computing system, which is included in the log file is parametric data.)
- c. A product database storage device for storing product information related to characteristics of a plurality of products related to the customer equipment, said product information for each said characteristic including a Limit corresponding to a possible value of said dynamic parametric data information of an associated one of said operating parameters. (Col 1, lines 29-46 and Col 5, line 47 through Col 6, line 48) (In Col1, lines 29-46 Gronemeyer discloses that a product database and a cross-reference database are obvious improvements that have previously been made in the art. As such, in Col 5, lines 47-67, when the server is describes as having goods and wares separated into different categories that interact with a log file to generates sales offers it inherently contains such databases)
- d. An offer generator means connected to said equipment database storage device and to said product database storage device for comparing a value of said stored parametric data information of a selected one of said operating parameters with at least one of said stored product information limits corresponding to said selected one operating parameter, said offer generator means generating a sales offer for a product associated with said limit directed to the customer associated with the customer equipment when said value and said limit have a predetermined relationship representing a maintenance requirement. (Col 3, lines 11 – 35; and Col 5, line 47 through Col 6, line 48) (The applicant asserts that Gronemeyer does not disclose the use of limits corresponding to possible values of parametric data related to operating parameters for creating offers. However, Gronemeyer

specifically discloses the user of parametric data relating to computer hard drives for determining offers that are displayed to a customer)

While Gronemeyer does not explicitly state that the remotely monitored equipment includes at least one of an elevator installation and an escalator installation, it is disclosed that the remotely monitored “computing device may be a computer or other intelligent device, such as routers and switches, in addition to consumer devices such as telephones, radios, appliances, etc” (Col 9, lines 1 – 20). The analogous teaching of Ives further discloses intelligent elevators which have “self-diagnostic control systems that automatically notify Otis Elevator when maintenance is required (Ives: Page 13, Col 1, lines 3-19) as well as examples of the types of operating parameters that are monitored such as usage parameters (Ives: Page 12, Fig 3). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the system disclosed by Gronemeyer in an elevator or escalator installation. One would have motivated to monitor such installations in order to provide elevator companies with the “the means to monitor and control the service side of their business” (Ives: Page 8, Col 2, lines 19-23)

Claim 19. Gronemeyer and Ives disclose the apparatus according to Claim 18 including a customer database storage device connected to said offer generator means for receiving said sales offer and a web server connected to said customer database storage device for sending said sales offer to the customer. (Col 5, line 47 through Col 6, line 48)

Claim 20. Gronemeyer and Ives disclose the apparatus according to Claim 19 wherein said web server generates said sales of a on a web page for viewing by the customer. (Col 4, lines 34 – 42)

Claim 22. Gronemeyer and Ives disclose the apparatus according to Claim 18 including a customer database storage device connected to said offer generator means for receiving said sales offer, said customer database storage device verifying accuracy of said sales offer against customer information stored in said customer database storage device. (Col 7, lines 56 – 64)

Claim 23. Gronemeyer and Ives disclose the apparatus according to Claim 18 including a customer database storage device connected to said offer generator for receiving said sales offer, said customer database storage device using customer information stored therein for transmitting said sales offer to the customer. (Col 7, lines 56 – 64)

Claim 24. Gronemeyer and Ives disclose the apparatus according to Claim 18 wherein said input means includes an interface connected to the customer equipment for receiving said parametric data information, a data collector means connected to said equipment database storage device and data transfer means connected between said interface and said data collector means for transferring said parametric data information to said equipment database storage device. (Col 2, lines 41 – 57)

Claim 25. Gronemeyer and Ives disclose the apparatus according to Claim 18 wherein the product information includes information about devices and services related to the customer equipment. (Col 2, lines 41 – 57)

Claim 26: Gronemeyer and Ives disclose the apparatus according to claim 1 wherein data regarding the hard drive capacity and the maximum available storage are gathered in order to facilitate a decision by the system (Col 3, lines 11-37). While Gronemeyer does not specifically state that a threshold is used, it would have been obvious to one having ordinary skill in the art at the time the invention was made to base this decision on a threshold. One would have been motivated to do so because the criteria supplied, hard drive capacity and available storage space, would readily lend themselves to calculating a percentage figure from which the threshold would be determined and a trigger point set. (i.e. Make offer if available storage space is less than 20% of the maximum capacity).

Claim 27: Gronemeyer and Ives disclose the apparatus according to claim 1 wherein data regarding the hard drive capacity and the maximum available storage are gathered in order to facilitate a decision by the system (Col 3, lines 11-37). While Gronemeyer does not specifically state that a range is used, it would have been obvious to one having ordinary skill in the art at the time the invention was made to base this decision on a range. One would have been motivated to do so because the criteria supplied, hard drive capacity and available storage space, would readily lend themselves to calculating a percentage figure from which a range would be

established. Any percentage falling within this range would then trigger the generation of an offer. (i.e. Make offer if available storage space is between 5% and 20% of the maximum capacity).

Claim 28. Gronemeyer discloses a method of using data obtained from remote monitoring of customer equipment for service purposes to generate product sales offers, comprising the steps of:

- a. Receiving dynamic parametric data information related to an electrical or mechanical operating parameter of customer equipment in an elevator installation or an escalator installation being remotely monitored for service purposes. (Col 1, lines 29-46 and Col 5, line 47 through Col 6, line 48)
- b. Storing the dynamic parametric data information in an equipment database storage device in a form suitable for determining when to take corrective service action and taking corrective service action at the installation based upon the stored dynamic parametric data information. (Col 1, lines 29-46 and Col 5, line 47 through Col 6, line 48)
- c. Storing in a product database storage device product information related to a characteristic of at least one product including a limit corresponding to a possible value of the dynamic parametric data information. (Col 1, lines 29-46 and Col 5, line 47 through Col 6, line 48)
- d. Comparing a value of the stored dynamic parametric data information with the limit. (Col 1, lines 29-46; Col 3, lines 11 – 35 and Col 5, line 47 through Col 6, line 48)

- e. Generating a sales offer directed to a customer associated with the customer equipment when the value and the limit have a predetermined relationship representing a maintenance requirement. (Col 1, lines 29-46; Col 3, lines 11 – 35 and Col 5, line 47 through Col 6, line 48)

While Gronemeyer does not explicitly state that the remotely monitored equipment includes at least one of an elevator installation and an escalator installation and the specific operating parameters associated with such, it is disclosed that the remotely monitored “computing device may be a computer or other intelligent device, such as routers and switches, in addition to consumer devices such as telephones, radios, appliances, etc” (Col 9, lines 1 – 20). The analogous teaching of Ives further discloses intelligent elevators which have “self-diagnostic control systems that automatically notify Otis Elevator when maintenance is required (Ives: Page 13, Col 1, lines 3-19) as well as examples of the types of operating parameters that are monitored such as usage parameters (Ives: Page 12, Fig 3). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the system disclosed by Gronemeyer in an elevator or escalator installation. One would have motivated to monitor such installations in order to provide elevator companies with the “the means to monitor and control the service side of their business” (Ives: Page 8, Col 2, lines 19-23)

Claim 29. Gronemeyer and Ives disclose the method according to Claim 28 including a step of storing in a customer database storage device customer information related to the customer and sending the sales offer to the customer based upon the stored customer information. (Col 1, lines 29-46 and Col 5, line 47 through Col 6, line 48)

Claim 30. Gronemeyer and Ives disclose the method according to Claim 29 including sending the sales offer to the customer by at least one of regular mail, e-mail and a web page. (Col 1, lines 29-46 and Col 5, line 47 through Col 6, line 48)

Claim 31. Gronemeyer and Ives disclose the method according to Claim 29 including using the customer information to verify, the accuracy of the sales offer. (Col 1, lines 29-46 and Col 5, line 47 through Col 6, line 48) (Since the sales offer sent to the customer is based upon the customer information, the accuracy of the offer in relationship to the customer information is inherently verified)

Claim 32. Gronemeyer and Ives disclose the method according to Claim 28 including a step of monitoring the customer equipment to generate the parametric data information. (Col 3, lines 11 – 37; Col 4, lines 25 – 33; and Col 7, lines 31 – 40; and Col 8, lines 11 - 14) (Applicant asserts that Gronemeyer requires a user to interact with websites for the remote monitoring to occur. The cited references disclose the operation of remote monitoring to occur without user intervention.)

Claim 33. Gronemeyer and Ives disclose the method according to Claim 28 wherein said step c. is performed by storing in the product database storage device product information related to characteristics of a plurality of devices and services. (Col 1, lines 29-46 and Col 5, line 47 through Col 6, line 48)

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Claim 34. Gronemeyer and Ives disclose the method according to Claim 28 including performing said steps a through b. for a plurality of operating parameters of the customer equipment. (Col 1, lines 29-46 and Col 5, line 47 through Col 6, line 48)

Claim 35. Gronemeyer discloses an apparatus for using data obtained from remote monitoring of customer equipment for service purposes to generate product sales offers to customers comprising:

- a. A data collector means, located remote from the installation, for receiving dynamic parametric data information related to electrical and mechanical operating parameters of remotely monitored customer equipment being monitored for service purposes, said dynamic parametric data information being suitable for service purposes. (Col 2, lines 41 – 57 and Col 3, line 11 through Col 4, line 24)
- b. An equipment database storage device connected to said data collector means for receiving and storing said dynamic parametric data information in a form suitable for determining when to take a corrective service action at the installation. (Col 5, lines 47-67)
- c. A product database storage device for storing product information related to characteristics of a plurality of products related to the customer equipment, said product information for each said characteristic including a limit corresponding to a possible value of said dynamic parametric data information of an associated one of said operating parameters. (Col 1, lines 29-46 and Col 5, line 47 through Col 6, line 48)
- d. An offer generator means connected to said equipment database storage device and to said product database storage device for comparing a value of said stored

dynamic parametric data information of a selected one of said operating parameters with at least one of said stored product information limits corresponding to said selected one operating parameter, said offer generator means generating a sales offer for a product associated with said limit directed to the customer associated with the customer equipment when said value and said limit have a predetermined relationship representing a maintenance requirement. (Col 3, lines 11 – 35; and Col 5, line 47 through Col 6, line 48)

- e. A customer database storage device connected to said offer generator means for receiving said sales offer. (Col 5, line 47 through Col 6, line 48)
- f. A web server connected to said customer database storage device for sending said sales offer to the customer. (Col 4, lines 34 – 42)

While Gronemeyer does not explicitly state that the remotely monitored equipment includes at least one of an elevator installation and an escalator installation, it is disclosed that the remotely monitored “computing device may be a computer or other intelligent device, such as routers and switches, in addition to consumer devices such as telephones, radios, appliances, etc” (Col 9, lines 1 – 20). The analogous teaching of Ives further discloses intelligent elevators which have “self-diagnostic control systems that automatically notify Otis Elevator when maintenance is required (Ives: Page 13, Col 1, lines 3-19) as well as examples of the types of operating parameters that are monitored such as usage parameters (Ives: Page 12, Fig 3). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the system disclosed by Gronemeyer in an elevator or escalator installation. One would have motivated to monitor such installations in order to

provide elevator companies with the “the means to monitor and control the service side of their business” (Ives: Page 8, Col 2, lines 19-23)

Claims 36 and 37: Gronemeyer and Ives disclose the apparatus according to claims 35 and 18 respectively. While Gronemeyer and Ives do not specifically recite that said usage parameter is one of run time, trips per hour and cycle times, common sense dictates that it would be obvious to one of ordinary skill in the art at the time the invention was made to include usage parameters that are specific to the intelligent device which is being monitored and basing said usage parameters upon the intended use of said intelligent device. The rational for including usage parameters such as run time, trips per hour, and cycle times is that such parameters are an obvious subset of a limited number of predictable usage parameters that affect the operation and maintenance of an elevator installation.

Claims 38 and 39: Gronemeyer and Ives disclose the apparatus according to claims 35 and 18 respectively. While Gronemeyer and Ives do not specifically recite that said environmental parameter is one of temperature changes, utility power, and weather, common sense dictates that it would be obvious to one of ordinary skill in the art at the time the invention was made to include environmental parameters that are specific to the intelligent device which is being monitored and basing said environmental parameters upon the intended use of said intelligent device. The rational for including environmental parameters such as temperature changes, utility power, and weather is that such parameters are an obvious subset of a limited

number of predictable environmental parameters that affect the operation and maintenance of an elevator installation.

8. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gronemeyer et al. (U.S. Patent Number: 6,363,359) in view of Ives et al. ("After the Sale: Leveraging Maintenance with Information Technology", MIS Quarterly, Vol. 12, No 1, March 1988, pp 7-21) in further view of Palme et al (RFC 2557, MIME Encapsulation of Aggregate Documents, such as HTML).

Claim 21: Gronemeyer and Ives disclose the apparatus according to claim 2 wherein said web server generates said sales offer as a web page (Col 6, lines 35-48).

However, Gronemeyer does not specifically state that the generated web page is transmitted to the consumer using an email transportation protocol. In the analogous teachings of Palme, a method of encapsulating web pages in email documents is disclosed (Page 1, lines 18-37). It would have been obvious to one having ordinary skill in the art at the time the invention was made to send the generated sales offers via email. One would have been motivated to do so in order to provide potential customers with a reminder of the offer, in the event that the customer was not ready to make a purchasing decision during the browsing session.

NEW GROUND(S) OF REJECTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

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The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim(s) 18 and 35 are rejected under 35 USC § 112, ¶ 2, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 18 and 35 recite the following means (or step) plus function limitation:

an offer generator means connected to said equipment database storage device and to said product database storage device for comparing a value of said stored dynamic parametric data information of a selected one of said operating parameters with at least one of said stored product information limits corresponding to said selected one operating parameter, said offer generator means generating a sales offer for a product associated with said limit directed to the customer associated with the customer equipment when said value and said limit have a predetermined relationship representing a maintenance requirement.

This limitation invokes 35 USC § 112, ¶ 6 because it meets the 3-prong analysis set forth in MPEP 2181 as it recites the phrase “means for” or “step for” (or appellant identifies the limitation as a means (or step) plus function limitation in the appeal brief) and the phrase is modified by functional language and it is not modified by sufficient structure, material, or acts for performing the recited function. Also see *Altiris Inc. v. Semantec Corp.*, 318 F.3d 1363, 1375 (Fed. Cir. 2003). 35 USC § 112, ¶ 6, requires such claim to be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof. “If one employs means plus function language in a claim, one must set forth in the specification an adequate disclosure showing what is meant by that language. If an

applicant fails to set forth an adequate disclosure, the applicant has in effect failed to particularly point out and distinctly claim the invention as required by the second paragraph of section § 112.” In re Donaldson Co., 16 F.3d 1189, 1195, 29 USPQ 1845, 1850 (Fed. Cir. 1994)(in banc.). For a computer-implemented means-plus-function claim limitation that invokes 35 USC § 112, ¶ 6, the corresponding structure is required to be more than simply a general purpose computer. Aristocrat Technologies, Inc. v. International Game Technology, 521 F.3d 1328, 1333, 86 USPQ2d 1235, 1239-40 (Fed. Cir. 2008). The corresponding structure for a computer-implemented function must include the algorithm as well as the general purpose computer. WMS Gaming, Inc. v. International Game Technology, 184 F.3d 1339, 51 USPQ2d 1385 (Fed. Cir. 1999). The written description must at least disclose the algorithm that transforms the general purpose microprocessor to a special purpose computer programmed to perform the claimed function. Aristocrat, 521 F.3d at 1338, 86 USPQ2d at 1242.

In the instant application, the following portions of the specification and drawings may appear to describe the corresponding structure for performing the claimed function:

Page 8 and Figure 1.

However, the specification and drawings do not disclose sufficient corresponding structure, material or acts for performing the claimed function. Claim 18 contains a limitation for a “offer generation means.....requirement” and claim 35 contains a similar limitation. The Specification does not set forth any software

instructions or algorithms for performing these respective functions. As such, the Appellants have failed to adequately describe sufficient structure for performing the functions claimed.

(10) Response to Argument

The rejection of Claims 36 and 37 under 35 USC 112, second paragraph:

Independent Claims 18 and 35 recite the limitation “at least one of a usage parameter, an environmental parameter, and mechanical deterioration. Claims 36 and 37 depend from Claims 18 and 35 respectively and attempts to require that the operating parameter include said usage parameter and that said usage parameter is one of run time, trips per hour and cycle time. The issue is that the scope of independent claims 18 and 35 do not require a usage parameter in order to infringe upon the claims. This is because the scope of the independent claims includes instances in which the only operating parameter is an environment parameter or instances in which the only operating parameter is a mechanical deterioration.

Dependent claims which are directed toward features that are optional or not required by the independent claim fail to further limit the claimed subject matter of the independent claim and as such they are properly rejected under 35 USC 112, second paragraph.

The rejection of Claims 18-27, 37, and 39 under 35 USC 112 first paragraph:

The applicant's attorney argues that support for the limitation “an input means located at and connected to an elevator installation or an escalator installation for receiving dynamic parametric data information related to electrical and mechanical operating

parameters of customer equipment in the installation being remotely monitored” of Claim 18 can be found in the Specification on Page 4, Lines 13-15; Page 6, line 29 through Page 7, line 5, and Figure 1.

Specification, Page 4, Lines 13-15 recites:

“In a preferred embodiment, an elevator system is operated in a normal manner, and is monitored with a remote monitor interface that transmits specific parametric data from the elevator system over a medium to a data concentrator. The data concentrator then transmits the data to a central database called the elevator database, or the equipment database.”

Specification, Page 6, line 19 through Page 7, line 5 (the examiner has also included lines 19 through 27 for the sake of clarity) recites:

“Referring now to FIG. 1, there is shown a sales offer apparatus 10 for using equipment remote monitoring to generate automated sales offerings. The sales offer apparatus 10 utilizes parametric data generated by customer equipment 12 that is operated in a normal manner and is being monitored for service purposes. The equipment 12, for example an elevator system or escalator system, includes components (not shown) performing a plurality of processes that are monitored, for example for control or safety reasons, including mechanical parameters of the elevator or escalator machinery. Each

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monitored process has at least one data point at which parametric data is generated. Typically the parametric data, whether generated in digital or analog signal form, is converted to a digital format suitable for transmission to a remote monitoring location.

The process operating conditions of the customer equipment 12, represented by the parametric data, are monitored by a remote monitor interface 14 connected to the data points. The parametric data generated by the equipment 12 can include, but is not limited to, functional, performance, and environmental data. The remote monitor interface 14 is preferably part of an existing control or safety system (not shown) installed with the equipment system 12. Alternatively, the remote monitor interface 14 can be a separate unit connected to an existing control or safety system. The remote monitor interface 14 transmits the parametric data from the equipment system 12 via a data transfer means 16 to a remote data collector or concentrator 18. The data transfer means 16 can be any type of data communications device known in the art including, but not limited to, a telephone line, a cable line, a satellite uplink, or the like."

The limitation in question of Independent claim 18, discloses:

- a. An input means **located at and connected to** an elevator installation or an escalator installation.
- b. The input means is used for **receiving dynamic parametric data information**.
- c. The parametric data information is related to electrical and mechanical operating parameters of customer equipment.
- d. The customer equipment is in the installation that is being remotely monitored.
- e. The dynamic parametric data is suitable for service purposes.
- f. The operating parameters include at least one of a usage parameter, an environmental parameter, and mechanical deterioration.

Based upon the applicants specification on Page 4, lines 13-15, the claimed customer equipment is the “elevator system” because it is being “remotely monitored”. According to the claim, the customer equipment is in the elevator or escalator installation. It is being monitored by a remote monitor interface which transmits parametric data from the elevator system over a medium to a data concentrator. At this point it is possible to consider the remote monitor interface to be the claimed “input means” because the remote monitor is “remotely receiving dynamic parametric data from the elevator system”. However, it is remote from the elevator system and thus remote from the elevator installation. Therefore it cannot be “located at and connected to the elevator system”. Thus, the remote monitor cannot be the claimed “input means”. The data concentrator is “receiving dynamic parametric data” and therefore is another possibility for the claimed “input means”. However, since the elevator system is being monitored by a remote monitor interface, the monitor interface is remote from the elevator system and the remote monitor

interface transmits the data over a medium to the data concentrator. Thus, there is no indication that the data concentrator is "located at and connected to an elevator installation or an escalator installation" since the elevator system, which is suppose to be in the elevator installation transmitted the parametric data to a remote monitor, and the remote monitor transmitted the data to the data concentrator. Therefore the data concentrator cannot be the claimed "input means". The data concentrator then transmits the information to a central database called the elevator database, or the equipment database. Thus the central database is receiving dynamic parametric data and therefore is another possibility for the claimed input means. However, due to the transmission from the elevator system to the remote monitor to the data concentrator and finally to the central database, there is no indication that the central database is "located at and connected to an elevator installation or an escalator installation" and therefore is not the claimed "input means". Thus, it is clear that the applicant's specification on Page 4, lines 13-15 fails to disclose the claimed "input means located at and connected to an elevator installation or an escalator installation for receiving dynamic parametric data information.

Based upon the applicant specification on Page 6, line 19 through Page 7, line 5, an example of the claimed "customer equipment" is an "elevator system or escalator system". The customer equipment is monitored by a remote monitor interface that is connected to data points and is monitoring operating conditions represented by parametric data. Thus, the remote monitor interface is receiving parametric data, but is remote from the customer equipment. According to the claim the customer equipment is in the elevator or escalator installation. Thus the remote monitor interface is remote from the elevator or escalator installation and cannot be

the claimed "input means" because it is not "located at and connected to the elevator system". The remote monitor interface may be part of an existing control or safety system which according to the specification is not shown that is installed with the equipment system or a separate unit connected to an existing control or safety system. However, since the specification fails to disclose how the control or safety system is integrated with the customer equipment, it is unclear as to whether the remote monitor is "located at and connected to the elevator system". A control system or a safety system would likely be connected in some fashion to the elevator system, but the location of the control system may be located at location different from the elevator system. Since the remote monitor interface is remote, one would expect that the control system or safety system is remote from the elevator system. Thus, the applicant's specification does not require that the remote monitor interface is "located at and connected to the elevator system" as recited by the claim limitation. The remote monitor interface then transmits the data it received from the equipment system to a remote data collector or concentrator. Since the remote data collector or concentrator is receiving parametric data it could be the claimed "input means", but since the remote monitor is remote from the elevator installation, and is transmitting the parametric data to a remote data collector or concentrator, the remote data collector or concentrator is remote from the elevator installation and thus cannot be "located at and connected to the elevator system". The applicant has failed to disclose where in the specification the Examiner can find support for the claimed limitations and as such the 35 USC 112, first paragraph rejection for a lack of written description is proper.

The rejection of Claims 38 and 39 under 35 USC 112, second paragraph:

Independent Claims 18 and 35 recite the limitation “at least one of a usage parameter, an environmental parameter, and mechanical deterioration. Claims 38 and 39 depend from Claims 18 and 35 respectively and attempts to require that the operating parameter include said environmental parameter and that said environmental parameter is one of temperature changes, utility power, and weather. The issue is that the scope of independent claims 18 and 35 do not require an environmental parameter in order to infringe upon the claims. This is because the scope of the independent claims includes instances in which the only operating parameter is an usage parameter or instances in which the only operating parameter is a mechanical deterioration. Dependent claims which are directed toward features that are optional or not required by the independent claim fail to further limit the claimed subject matter of the independent claim and as such they are properly rejected under 35 USC 112, second paragraph.

The rejection of Claims 18-20 and 22-39 under 35 USC 103(a):

Claim 18:

The applicant argues that Gronemeyer does not disclose an “input means” that receives parametric information as recited by the claim limitations. The examiner notes that the claim limitation actual recites “an input means” “for receiving parametric information” and thus the input means must be able to receive parametric information, but the actual receipt of the parametric information is not required by the claim limitation. Regardless, the Gronemeyer reference discloses in Col 2, lines 41-57 that a web server (a remote “input means” “connected to” the customer

equipment) queries a sentinel (a local “input means” “located at and connected to” the customer equipment) that resides on the client, the sentinel queries the client computing device (“customer equipment that is remotely monitored) and receives information regarding needed goods and services, including identifying needed replacements for existing hardware and/or software. Thus, Gronemeyer discloses two different “input means”, one that is remotely monitoring the customer equipment and receiving information and one that is installed at and connected to the customer equipment and receiving information. Gronemeyer further discloses in Col 9, lines 1-20, that the computing device ("customer equipment") is expected to operate in a networked environment using logical connections to one or more computing devices, where remote computing devices can be configured as having some of all of the features of the computing device. Gronemeyer further disclose in Col 9, lines 1-20 that the computing device may be embodied as single devices, or as a combination or separate components. Thus sentinel is also disclosed as an “input means” that remotely receives information and is located at and connected to the customer equipment. Further examples of an “input means” can also be found in Gronemeyer. Col 4, lines 5-13 discloses the sentinel transmitting the data to a user of the client computing device. The user in this instance can be an “input means” because they are receiving information from the sentinel that is presented to the user. The user, in this case is located at the computer but no physical connection exists unless one considers that the user is able to elect what information is sent to the web server. In order to make an election a connection of some type must occur. Given the 35 USC 112, first paragraph deficiencies of the claim, any one of these interpretations can accurately represent the claimed “input means”. The next issue regarding the

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argument is the type of information. Does the information disclose by Gronemeyer represent parametric information? The Merriam-Webster dictionary defines

“parametric” as:

1 a: an arbitrary constant whose value characterizes a member of a system (as a family of curves) ; *also* : a quantity (as a mean or variance) that describes a statistical population

b: an independent variable used to express the coordinates of a variable point and functions of them — compare **PARAMETRIC EQUATION**

2: any of a set of physical properties whose values determine the characteristics or behavior of something <*parameters* of the atmosphere such as temperature, pressure, and density>

3: something represented by a parameter : a characteristic element ; *broadly* : **CHARACTERISTIC**, **ELEMENT**, **FACTOR** <political dissent as a *parameter* of modern life>4: **LIMIT**, **BOUNDARY** —usually used in plural <the *parameters* of science fiction>

Given the applicants example of parametric data in the specification:

Abstract: “parametric data information” is related to the “operating parameters of the equipment”

Page 2, lines 3-5: example of “parametric data” would be “functional, performance, and environmental data.

The examiner has interpreted the term “parametric” to be consistent with the second definition in Merriam-Webster: Any of a set of physical properties whose values determine the characteristics or behavior of something. Gronemeyer discloses in Col 3, line 11- Col 4, line 24 that the information includes information regarding the physical properties and characteristics of the system. The parametric data includes

such things as the number of hard drives, the hard drive capacity, and the maximum available storage. Gronemeyer also discloses in Col 2, lines 41-47 that the sentinel determination can include the identification of needed replacements for existing hardware and/or software. This too would be considered parametric data since a determination regarding the characteristics or behavior is made in order to determine that replace is necessary. Thus, it is clear, contrary to the applicant's arguments, that Gronemeyer discloses an "input means" "for receiving dynamic parametric data information" and the limitations of the claims as currently written have been met.

Claims 18, 28, and 35:

1. The applicant argues that Claims 18 and 35 recite that "the dynamic parametric data information is suitable for service purposes, and Claim 28 recites "storing the dynamic parametric data information in an equipment database storage device in a form suitable for determining when to take corrective action and taking corrective action at the installation based upon the stored dynamic parametric data information. The applicant argues that the parametric information disclosed by Gronemeyer is static parametric information and not dynamic parametric information. However, Gronemeyer discloses in Col 2, lines 41 – 57; and Col 3, line 11 through Col 4, line 24 that information gathered included information needed to identify needed replacements for existing hardware or software including the maximum available storage space. If the information was static as the applicant contends then it does not change, and as such, the system would not be able to operate as claimed because it would not be possible to identify when a replacement is needed. Additionally, the maximum available storage

space information is also dynamic since it changes based upon the number of items stored in storage. Note that the inclusion of the term available requires dynamicity, because it needs to determine how much space is left to be used. If static information was the intent of the disclosure, then Gronemeyer could have used the parameter of maximum storage space instead of the recited maximum available storage space. Thus it is clear that the parameter information disclosed by Gronemeyer includes dynamic parametric information.

2. The applicant argues that Claims 18, 28, and 35 recite that the equipment database storage device receives and stores the dynamic parametric data information in a form suitable for determining when to take corrective service action at the installation based upon the dynamic parametric data information, and that Gronemeyer does not mention determining when to take corrective service action at the installation based upon the log file data. However, the limitations of the claims as currently written do not require that such a determination be made. The claim limitation at currently written is for an equipment database storage device that has a means for receiving and storing dynamic parametric information. The information that is received and stored is already in a form suitable for a determining action to be made. Regardless, the Gronemeyer reference discloses, in Col 2, lines 41-47; Col 3, line 11 through Col 4, line 4; and Col 5, lines 47-67, that first the sentinel (an input means) receives log file information regarding the properties that are monitored on the client system, then the sentinel transmits this information to the web server (an input means) . The Gronemeyer reference discloses in Col 2, lines 41-47, that the sentinel (an input means) determines the

need for replacing hardware and/or software. Gronemeyer further discloses in Col 5, lines 47 through 67 and Col 6, lines 15-19 that the sentinel may just gather all of the data from the client system and send it to the web server, and the web server determines what offers to provide based upon the information received. Thus it is clear the Gronemeyer discloses a storage device that is remote from the client system, and connected to the input means. The storage device receives and stores data that is used to determine an action to be performed.

Claims 19, 20, 22-27, 29-34, and 36-39:

These claims depend from one of independent Claims 18 or 28 and as such are rejected based upon the arguments above, and the art as applied in the previous Office Actions.

The rejection of Claim 21 under 35 USC 103(a):

The applicant argues that the combination of Gronemeyer, Ives and Palme does not disclose the web server generating said sales offer as an e-mail message for transmission to the client as recited in claim 21. However, the Gronemeyer reference discloses that the web server generates the sales offer as a web page in (Col 6, lines 35-48). Furthermore, Palme discloses encapsulating web pages in email documents on Page 1, lines 18-37. Thus the combination of Gronemeyer and Palme discloses generating a webpage that is encapsulated in an email message. The web page containing a sales offer generated by the web server. The applicant is reminded the term MIME as disclosed in Palme stands for Multipurpose Internet Mail Extensions and were created in order to extend the formatting email messages to include

multipart message bodies, graphics, sounds, and animations as well as the original ASCII text message.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

This examiner's answer contains a new ground of rejection set forth in section **(9)** above. Accordingly, appellant must within **TWO MONTHS** from the date of this answer exercise one of the following two options to avoid *sua sponte* **dismissal of the appeal** as to the claims subject to the new ground of rejection:

(1) Reopen prosecution. Request that prosecution be reopened before the primary examiner by filing a reply under 37 CFR 1.111 with or without amendment, affidavit or other evidence. Any amendment, affidavit or other evidence must be relevant to the new grounds of rejection. A request that complies with 37 CFR 41.39(b)(1) will be entered and considered. Any request that prosecution be reopened will be treated as a request to withdraw the appeal.

(2) Maintain appeal. Request that the appeal be maintained by filing a reply brief as set forth in 37 CFR 41.41. Such a reply brief must address each new ground of rejection as set forth in 37 CFR 41.37(c)(1)(vii) and should be in compliance with the other requirements of 37 CFR 41.37(c). If a reply brief filed pursuant to 37 CFR 41.39(b)(2) is accompanied by any amendment, affidavit or other evidence, it shall be

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treated as a request that prosecution be reopened before the primary examiner under 37 CFR 41.39(b)(1).

Extensions of time under 37 CFR 1.136(a) are not applicable to the TWO MONTH time period set forth above. See 37 CFR 1.136(b) for extensions of time to reply for patent applications and 37 CFR 1.550(c) for extensions of time to reply for ex parte reexamination proceedings.

Respectfully submitted,

John Van Bramer
/John Van Bramer/
Primary Examiner, Art Unit 3622

Conferees:

Eric Stamber/E. W. S./
Supervisory Patent Examiner, Art Unit 3622

Vincent Millin /vm/
Appeals Conference Specialist

A Technology Center Director or designee must personally approve the new ground(s) of rejection set forth in section (9) above by signing below:

/Wynn W. Coggins/

Director, TC 3600